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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/873,505	06/04/2001	Hongjie Cao	1928.PC	4692

7590

06/14/2002

Thomas F. Roland  
NATIONAL STARCH AND CHEMICAL COMPANY  
10 Finderne Avenue  
Bridgewater, NJ 08807-0500

EXAMINER

YU, GINA C

ART UNIT PAPER NUMBER

1617

DATE MAILED: 06/14/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Applicant(s)

09/873,505

Applicant(s)

CAO ET AL.

Examiner

Gina C. Yu

Art Unit

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**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 22 May 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See continuing page.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 1-25.

Claim(s) withdrawn from consideration: None.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

RUSSELL TRAVERS  
PRIMARY EXAMINER  
GROUP 1200

Applicants' arguments have been considered but do not place the application in condition for allowance because they are not persuasive and rejections are maintained as indicated in the final rejection mailed March 22, 2002.

Applicants argue that the Wurzburg reference teaches away from starch-encapsulated compounds that are "essentially non-separable". Specifically, applicants argue that the patent (US 3091567, 1963) which is referenced by the Wurzburg article teaches away from applicant's invention, as the starch-encapsulated hydrophobic compounds in that patent dissolves in 72 hours. Examiner takes the position that the alleged counterindicative teaching in the patent should not be incorporated in the cited article.

It must be noted that the cited reference in the previous office actions are Modified Starches: Properties and Uses (1986), not the US Patent 3091567. The article merely refers to the patent in context of showing the types of the starch source. Nowhere in the cited article the author teaches or suggest that the starch-encapsulating agents in particular applications such as baby powder or deodorant spray exhibit gradual or controlled release of water-repellant properties that "dissolves in 72 hours". The patent does not even mention these applications that are disclosed in the article, and it does not appear that the author of the 1983 article intended to incorporate all of the teachings in the 1963 patent.

Applicants' argument that Eskin does not illustrate an example formula for cosmetic or personal care application is not persuasive. Given the explicit teaching in Eskin that the invention is applicable in specific cosmetic and personal care products, it

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would have been obvious to a skilled artisan to incorporate the starch-encapsulating agent into cosmetic or personal care formulation known in the art as suggested by Eskin.

Applicants also assert that the emulsion carrier in Roulier would cause the starch and hydrophobic compound to separate. This argument is presented without convincing evidence, and moreover, applicants also disclose and claim emulsion composition. See claim 24.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 703-308-3951.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezie can be reached on 703-308-4612. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Gina C. Yu  
Patent Examiner  
June 10, 2002

  
RUSSELL TRAVERS  
PRIMARY EXAMINER  
GROUP 1200